



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	04/02/14	Bill No:	Assembly Bill 1717
Tax Program:	Prepaid Mobile Telephony Services Surcharge	Author:	Perea
Sponsor:	CTIA – The Wireless Association	Code Sections:	RTC 41020, 41030 RTC Div.2, Part 21 (42001) RTC Div. 2, Part 21.1 (42100)
Related Bills:		Effective Date:	Upon Enactment

This analysis only addresses the provisions that impact the Board of Equalization (BOE)

BILL SUMMARY

Among other things, this bill imposes upon each prepaid consumer a prepaid mobile telephony services (MTS) surcharge to be collected by a seller on each retail transaction involving prepaid mobile telephony services.

Summary of Amendments

Among other things, the amendments since the last analysis (1) delete the 5-year sunset date and related provisions; and (2) remove both the requirement for service suppliers to remit, and the prohibition on collection of, the Emergency Telephone Users Surcharge and California Public Utilities Commission (CPUC) surcharges and user fee imposed on prepaid mobile telephony services for calendar year 2016.

ANALYSIS

CURRENT LAW

Surcharges and User Fee.¹ Current law assesses a number of state surcharges and a user fee on telecommunications services. Telephone service providers collect these surcharges and the user fee from their customers and remit them to either the CPUC or the BOE, as specified.

CPUC-Mandated Telecommunications All-End-User Surcharges. Currently, six CPUC-mandated telecommunications all-end-user surcharges support various public purpose programs in California. The all-end-user surcharges are remitted to the CPUC and the surcharge rates vary from program to program. The CPUC periodically adjusts the surcharge rates based on the forecast demand for the programs. The six all-end-user surcharge programs are as follows:

- **Universal LifeLine Telephone Service (ULTS) @ 1.15%.** This program provides discounted basic telephone (landline) services to eligible California households.
- **Deaf and Disabled Telecommunications Program (DDTP) @ 0.2%.** The CPUC implemented three telecommunications programs for California residents who are deaf, hearing impaired, or disabled.

¹ The following information is provided by the CPUC; for additional detail see [Surcharges and Taxes](#).

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- **California High Cost Fund-A (CHCF-A) @ 0.18%.** This fund provides a source of supplemental revenues to 14 small local exchange carriers (LECs) for the purpose of minimizing any rate disparity between rural and metropolitan areas.
- **California High Cost Fund-B (CHCF-B) @ 0.0%².** This fund provides subsidies to carriers of last resort (COLRs) to provide basic local telephone service to residential customers in high-cost areas that certain carriers currently service, as specified. The fund keeps basic telephone service affordable to meet the CPUC's universal service goal.
- **California Teleconnect Fund (CTF) @ 0.59%.** Another program established by the CPUC to meet universal service goals. This fund provides a 50% discount on selected telecommunication services to qualifying schools, libraries, government-owned and operated hospitals and health clinics, and community-based organizations.
- **California Advanced Services Fund (CASF) @ 0.164%.** A program that provides grants to "telephone corporations" to fund unserved and underserved areas with broadband services.

CPUC User Fee (Reimbursement Account) @ 0.18%. The CPUC determines annually the appropriate fee to be paid by the telecommunications carriers. The CPUC calculates the user fee based on the telecommunications carrier's gross intrastate revenue, excluding inter-carrier sales, equipment sales, and directory advertising. The fee, which is remitted to the CPUC, finances the CPUC's annual operating budget.

Telecommunications carriers with annual gross intrastate revenues in excess of \$750,000 remit this fee quarterly, on or before the 15th of April, July, October, and January. Telecommunications carriers with annual gross intrastate revenues of \$750,000 or less remit the fee annually on or before January 15.

Emergency Telephone Users Surcharge (911 Surcharge). Under existing law,³ the 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for:

- Intrastate telephone communication service in this state, and
- Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by any service user utilizing the digits 9-1-1 in this state.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time it collects its billing from the service user. It also requires the surcharge to be added to, and stated separately in, a service supplier's billings to the service user.

Prepaid Calling Cards. [Regulation 2403](#), *Prepaid Telephone Calling Cards*, provides that the surcharge applies to the dollar amounts deducted or the value of the minutes deducted from the prepaid telephone calling card for intrastate telephone communication service. The surcharge does not apply to dollar amounts or minutes for interstate telephone communication services or minutes the user forfeits because of expiration.

² The CHCF-B surcharge rate was temporarily reduced from 0.30% to 0.0%, effective February 1, 2014, because the CPUC determined that the current funds available in the CHCF-B fund's surplus reserve are sufficient to meet forecasted expenditures through January 1, 2015.

³ Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code (RTC).

The regulation authorizes a service supplier to apply the surcharge to an estimate of the charges for intrastate telephone communication service supplied through a prepaid telephone calling card subject to the surcharge. The regulation also allows the service supplier to base the estimate of charges on such call information as the service supplier reasonably believes demonstrates the approximate amount of intrastate telephone communication service charges subject to the surcharge.

If a prepaid telephone calling card contains a statement that the card price includes applicable taxes and fees, the regulation authorizes the service supplier responsible for surcharge collection and payment to reduce the taxable measure of such services by the amount of taxes and fees that are not subject to the 911 surcharge, including the 911 surcharge itself.

Rate. The current surcharge rate is 0.75% of the amounts paid for intrastate telephone and VoIP services in this state. Service suppliers remit the surcharge to the BOE for deposit in the State Treasury to the credit of the State Emergency Telephone Number Account (Account) in the General Fund. The funds in the Account pay for 911 emergency telephone number system administration costs.

Local Taxes, Fees, and Surcharges. Locally imposed taxes, fees, and surcharges on communications services, such as 911 or access line taxes, fees, and surcharges and utility user taxes (UUTs), may also be imposed by cities and counties on the consumption of utility services, including telephone service.

PROPOSED LAW

Prepaid Mobile Telephony Services Surcharge Collection Act

This bill enacts the Prepaid Mobile Telephony Services Surcharge Collection Act (Act).⁴ The Act imposes, on and after January 1, 2016, a prepaid mobile telephony services surcharge (MTS surcharge) on each prepaid consumer in lieu of the surcharges and user fee imposed under existing law and collected and paid to the CPUC and BOE by telephone communication service providers. The Act requires a seller to collect the surcharge from the prepaid consumer at the time of each prepaid mobile telephony services “retail transaction” in this state. The bill requires the surcharge and local charges to be imposed as a percentage of the retail sales price. The bill also requires the surcharge to be separately stated on an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

The bill defines a “retail transaction” to mean “the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business.”

Surcharge Liability. The bill imposes the MTS surcharge and local charges on a prepaid consumer rather than the seller; however, the bill requires the seller to collect and remit all of the MTS surcharges and local charges. Both the surcharge amounts required to be collected and any unreturned amounts the seller represents and collects as the MTS surcharge and local charge owed by the prepaid consumer that are not actually owed constitutes a seller’s debt to the state, or jointly to the state and to the local jurisdiction, for purposes of collection on behalf of, and payment to, the local jurisdiction imposing the charge.

⁴ Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code (RTC).

Furthermore, the bill provides that a seller that collects an amount that exceeds the MTS surcharge and local charges owing may refund those amounts to the prepaid consumer. The seller may refund those amounts even though the surcharge amount was submitted to the BOE and no corresponding credit or refund has yet been secured.

The bill also provides that every prepaid consumer is liable for the MTS surcharge and local charges until paid to the state. However, a prepaid consumer's payment to a registered seller relieves the consumer from further liability. Nothing in the Act imposes any obligation upon a seller to take any legal action to enforce the collection of the surcharge and local charges imposed.

Administration. This bill requires the BOE to administer and collect the MTS surcharge pursuant to the Fee Collection Procedures Law (FCPL).⁵ For purposes of the Act, the bill clarifies the terms "fee" and "feepayer" as follows:

- "Fee" includes the MTS surcharge imposed by this bill; and
- "Feepayer" includes a person required to pay that surcharge, which includes a seller.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

The bill specifically authorizes the BOE to prescribe and adopt tax administration and enforcement regulations including, but not limited to, collections, reporting, refunds, and appeals. In addition, the bill authorizes the BOE to prescribe, adopt, and enforce any emergency regulations as necessary to implement the Act.

The bill also requires the BOE to: (1) establish procedures for a seller to document when a sale is not a retail transaction, and (2) establish procedures for sharing specified MTS surcharge collection information upon the request of the CPUC or the Office of Emergency Services (OES).

Furthermore, the bill relieves a seller from the liability to collect the prepaid MTS surcharge that became due and payable but was subsequently found to be worthless and written off for income tax purposes. If a seller is not required to file income tax returns, the bill allows a bad debt deduction or refund if the amount is charged off in accordance with generally accepted accounting principles. If a seller subsequently collects any amounts for which a bad debt deduction was taken or a refund was claimed, the amount so collected is required to be reported and paid to the BOE on the first return subsequently filed. The bill authorizes the BOE to promulgate regulations with respect to uncollected or worthless accounts, as deemed necessary.

Exemption. The bill exempts from the prepaid MTS surcharge the retail purchase of prepaid MTS if all of the following apply:

- The prepaid consumer is certified as state or federal lifeline program eligible.
- The seller is an authorized lifeline service provider, as described.

⁵ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

- The exemption applies only to the amount paid for prepaid MTS that the lifeline program specifies as exempt from surcharges and fees that compromise the prepaid MTS surcharge.

For purposes of the exemption, the bill defines “state lifeline program” to mean the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act⁶ or Moore Act.

Registration, Reporting, and Payment. The bill requires every seller to register with the BOE on a BOE-prescribed form. The bill also requires the BOE to establish a registration method that utilizes the existing seller’s permit registration process for sales and use tax purposes.

The MTS surcharge is due and payable to the BOE quarterly on or before the last day of the next month following each calendar quarter. In addition, a return for the preceding calendar quarter must be filed with the BOE using electronic media at the time of payment.

Existing law⁷ authorizes the payment of the amount due and the filing of returns for periods other than the period or periods specified in the tax and fee laws administered under the FCPL.

Both the electronic application and tax return would be authenticated in a form or pursuant to a method as the BOE may prescribe.

The bill allows a seller, but not a seller that is a telephone corporation or the provider of prepaid MTS, to deduct and retain an amount equal to 2% of the total MTS surcharge and local charge collected by the seller and requires the seller to remit the remainder of the surcharges collected to the BOE. A seller that is a lifeline service provider shall exclude from its remittance to the BOE any applicable lifeline exemption for prepaid MTS sold directly to a prepaid customer.

MTS Surcharge Calculation. The bill requires the BOE to calculate the MTS surcharge rate annually, no later than November 1 each year commencing November 1, 2015, by combining the following:

- **911 Surcharge Rate.** The surcharge rate reported pursuant to Section 41030(c) of the 911 Surcharge Act.

The bill amends 911 Surcharge Act Section 41030(b) to detail how the OES must determine the 911 surcharge rate and the MTS surcharge rate, commencing with the calculation made on October 1, 2015, to be effective January 1, 2016. In making the computation of the charges applicable to the intrastate portion of prepaid mobile telephone services, the OES is required to use “the computation method developed by the CPUC and reported to the OES.” Section 41030(c) further requires the OES to notify the BOE of the 911 surcharge amount, and the prepaid MTS surcharge amount, by October 15 of each year.

- **CPUC End-User Surcharges.** The bill establishes the CPUC’s reimbursement (user) fee and telecommunication universal surcharges pursuant to Section 319(b) of the Public Utilities Code (PUC).

⁶ Article 8 (commencing with Section 781) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code

⁷ RTC §55041.1

This measure adds PUC Section 319 to require the CPUC to compute, commencing October 1, 2015:

- A reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, and
- The cumulative amount of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services.

In addition, Section 319 requires the CPUC, on or before October 8 each year, to post the reimbursement fee and cumulative surcharge notice on its Internet Web site and notify both the OES and the BOE of the information. Except for the reimbursement fee and telecommunications universal service surcharge portion of the MTS surcharge, the bill does not restrict the CPUC's authority to adjust the reimbursement fees or universal service surcharges or require that they only be adjusted once annually.

Furthermore, Section 319 provides the CPUC with enforcement authority "to ensure the proper remittance over retail transactions" pursuant to the Act where the prepaid MTS provider is also the seller. However, the CPUC must collaborate with the BOE in the exercise of its enforcement authority.

- **Local Taxes and Surcharges.** The bill requires the BOE to post on its Internet Web site, no later than each December 1, the combined total of the rates of the MTS surcharge and the rate or rates of local charges for each local jurisdiction. The posted combined rate applies to all retail transactions during the calendar year beginning April 1 following the posting. However, the bill provides an exception when a local agency notifies the BOE that the local charge(s) is inaccurate or no longer imposed or has decreased. In such cases, the bill requires the BOE to promptly post the recalculated rate(s). The change becomes operative on the first day of the calendar quarter commencing more than 60 days from the date of the local agency notification.

Retail Sale Location. The bill provides the MTS surcharge is imposed upon a percentage of the sales price of each retail transaction that occurs in this state. A retail transaction occurs *in this state* if the consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer's address is in this state (known-address transaction). A consumer's address is in this state under any one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
- The prepaid consumer's address is known by the seller to be in the state. The consumer's address is considered to be "known by the seller" if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.
- The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.
- The mobile telephone number associates with a location in this state.

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The bill states that a retail transaction occurs at only one location for local charge determination. The bill presumes the consumption of, use of, or access to prepaid MTS occurs at the “point-of-sale” retail transaction location. The bill further presumes a “known-address” retail transaction occurs by the location circumstances bulleted above, in descending order. The bill also presumes the consumption of, use of, or access to the prepaid MTS in a known-address transaction occurs at the known address.

Transaction Location. For a known-address transaction, the bill allows the seller to collect the MTS surcharge and local charges that correspond to the prepaid consumer’s five digit postal ZIP Code.

This measure discharges a seller from any liability for additional MTS surcharge or local charges and also relieves the seller from refunding amounts collected and remitted to the BOE if:

- A seller relies in good faith on BOE-provided information to match either a point-of-sale transaction location, or the five digit postal ZIP Code of the prepaid consumer’s known-address, to the applicable MTS surcharge and local charges amount;
- A seller collects that amount from the prepaid consumer; and
- A seller remits the amount to the BOE in compliance with the Act.

The bill also discharges the seller from liability for any additional local charges and relieves the seller from refunding amounts collected and remitted if the seller, with due diligence and in good faith, relies on credible information to match the prepaid consumer’s five digit postal ZIP code to the correct local charge, even if the ZIP code corresponds to more than one local charge in a known-address transaction.

Miscellaneous Provisions. The MTS surcharge applies to the entire price where prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price. However, if the prepaid MTS is sold with a cellular telephone and the purchase price for the prepaid cellular phone component of the bundled charge is disclosed to the consumer on a receipt, invoice, or other written electronic documentation provided to the prepaid consumer, the prepaid MTS surcharge and local charge may be calculated on an amount that excludes the separately stated cellular telephone price. Furthermore, the bill prohibits the application of the surcharge or local charges to a transaction where a minimal prepaid MTS amount is sold with a cellular telephone for a single, non-itemized bundled price. For these purposes, a minimal amount includes a service allotment denominated as 10 minutes or less, or \$5 or less.

The bill authorizes a credit against, but not to exceed, the MTS surcharge and local charges where the prepaid consumer paid the 911 surcharge, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit would be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

Deposit of Revenues. The bill requires the BOE to deposit all MTS surcharge revenues into the Prepaid Mobile Telephony Services Surcharge Fund (MTS Surcharge Fund). Deposited amounts must include all surcharges, interest, penalties, and other amounts collected, less payments of refunds and reimbursement to the BOE for administration and collection expenses. The bill creates the MTS Surcharge Fund in the State Treasury. All moneys in the MTS Surcharge Fund would be deposited as follows:

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- The 911 surcharge portion of the MTS surcharge would be deposited into the Prepaid MTS 911 Account, which this bill creates in the MTS Surcharge Fund.
- The CPUC surcharges portion of the MTS surcharge would be deposited into the Prepaid MTS PUC Account, which this bill also creates in the MTS Surcharge Fund.

Definitions. This bill includes several definitions of key terms, including, but not limited to, the following:

- "Mobile data service" has the same meaning as defined in Public Utilities Code Section 224.4, which provides:

"Mobile data service" means the delivery of nonvoice information over a radio band licensed by the Federal Communications Commission, to a mobile device and includes nonvoice information communicated to a mobile telephony services handset, nonvoice information communicated to handheld personal digital assistant (PDA) devices and laptop computers, and mobile paging service carriers offering services on pagers and two-way messaging devices. "Mobile data service" includes mobile broadband service offering connectivity over a radio band licensed by the Federal Communications Commission. Unless specified to the contrary, "mobile data service" does not include nonvoice information communicated through a wireless local area network operating in the unlicensed radio bands, commonly known as a "Wi-Fi" network.

- "Mobile telephony service" or "MTS" has the same meaning as defined in Section 224.4 of the Public Utilities Code, which provides:

"Mobile telephony service" means commercially available interconnected mobile phone services that provide voice communication access to the public switched telephone network (PSTN) by way of mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), digital Specialized Mobile Radio (SMR), or another radio band licensed by the Federal Communications Commission. "Mobile telephony services" does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

- "Seller" means a person that sells prepaid mobile telephony service to a person in a retail transaction.

Local Prepaid Mobile Telephony Services Collection Act

This bill also enacts and repeals the Local Prepaid Mobile Telephony Services Collection Act⁸ (Local Act). It provides that it "is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulation concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services, to the extent those provisions are inconsistent with the provisions of this part and Part 21 (commencing with Section 42000). It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges."

⁸ Part 21.1 (commencing with Section 42100) of Division 2 of the RTC.

The Local Act imposes, on and after January 1, 2016, a local charge by a local agency on prepaid MTS collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid Mobile Telephony Services Surcharge Collection Act; provided that on or before September 1, 2015, the local agency enters into a contract with the BOE, as provided.

In the event that a local agency adopts a new local charge on prepaid MTS after September 1, 2015, the Local Act requires the local agency to enter into a contract with the BOE, as provided, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

In the contract, the local agency must certify to the BOE: (1) that its ordinance applies its local charge to prepaid MTS and that the local agency agrees to indemnify, and hold and save harmless, the BOE, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) the amount of the local 911 charge or the applicable tiered rate for a utility user tax.

If a local agency increases its local charge after September 1, 2015, the local agency must provide the BOE with written notice of the increased local charge on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

Notwithstanding any other law, on and after January 1, 2016, the bill:

- Suspends the utility user tax on the consumption of prepaid MTS in the city or county at the rate specified in its ordinance. The bill provides applicable tiered rates based on the existing city or county rate. This provision is self-executing.
- Suspends a charge rate applicable to prepaid MTS for communication services or local “911” emergency telephone access. The bill specifies the applicable rate as 0% or a calculated rate percentage, based on the existing city and county per access line rate.

On and after January 1, 2016, the Local Act shall be:

- The exclusive collection method for the local UUT, local 911 charge, and any other local charge imposed on consumers using prepaid MTS, and for defining the scope of the tax or charge.
- The complete substitute for the UUT rate set forth in the local ordinance at the specified tiered rate. The bill also states that “this part shall not preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.”

Local Act Administration. The bill requires the BOE to perform all functions incident to the collection of the local charges of a city or county. In addition the BOE must collect the local charges in the same manner as it collects the MTS surcharge under the MTS Act, subject to specified limitations. Those limitations, for which the city or county is responsible, include:

- Defending any claim regarding the validity of the ordinance in its application to prepaid MTS.
- Interpreting any provision of the ordinance, except to the extent specifically superseded by the Local Act.
- Responding to specified customer claims for refund.

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- Certifying that the city or county ordinance applies the local charge to prepaid MTS and agrees to indemnify and hold harmless the BOE, its officers, agents, and employees for any and all liability for damages that may result from collection of the local charge.
- Reallocation of local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

For purposes of the Local Act, the bill clarifies that the references in the FCPL to “fee” include the local charge and references to “feepayer” include a person required to pay the local charge, including the seller.

The Local Act authorizes the BOE to prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

The Local Act limits the BOE’s audit duties to verification that the seller complied with the Act and allows the BOE to contract with a third party to:

- Allocate and transmit collected local charges in the Prepaid Mobile Telephony Services Fund to the appropriate local jurisdictions.
- Audit proper collection and remittance of the local charge.
- Respond to requests from sellers, customers, boards, and others regarding local charges.

The bill applies existing disclosure laws to any third party contract, and prohibits contingent fee arrangements as payment for services rendered.

Local Act: Deposit of Revenues. The bill creates the Local Charges for Prepaid Mobile Telephony Services Fund in the State Treasury. All local charges imposed and collected by the BOE are to be held in trust for the local taxing jurisdiction. Local charges consist of all taxes, charges, interest, penalties, and other amounts collected by the BOE, less payments for refunds and reimbursement to the BOE for expenses to administer and collect the local charges. The bill requires the BOE to periodically transmit the funds to the local jurisdictions as promptly as feasible and at least once in each calendar quarter. The BOE must also furnish a quarterly statement to the local jurisdictions indicating the amounts paid and withheld.

Miscellaneous Provisions. The Local Act contains provisions similar to the Bradley-Burns Uniform Local Sales and Use Tax Law and Transactions and Use Tax Law, including, but not limited to provisions that require:

- the city or county to pay such costs monthly as incurred and billed by the BOE that include all preparatory costs, as described. The Director of Finance would resolve any preparatory-cost disputes, and his or her decision would be final.
- the BOE to annually prepare a report showing the amount of both reimbursed and unreimbursed administrative local charges collection costs.

Sole responsibility lies with a city or county that has adopted an ordinance that imposes a charge that applies to prepaid MTS to:

1. Defend any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service.

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2. Interpret any provision of the ordinance, except to the extent specifically superseded by this statute.
3. Respond to claims for refund, including claims of exemption under the ordinance.

911 Surcharge Act. This bill states that, commencing January 1, 2016, a MTS surcharge must be imposed on amounts paid for prepaid MTS pursuant to the Act in lieu of the 911 surcharge.

Savings Clause. The bill adds uncodified language that preserves administrative provisions that are applicable for the collection of the 911 surcharge and CPUC charges, the liability for which accrued prior to January 1, 2016; the making of any refunds and the effecting of any credits; the disposition of money collected; and the commencement of any action or proceeding pursuant to the Public Utilities Act⁹.

Operative Date. As an urgency measure, the bill becomes effective immediately. However, the MTS surcharge is operative January 1, 2016.

LEGISLATIVE HISTORY

Last year's identical AB 300 (Perea) successfully passed the Legislature, but was vetoed by Governor Brown. In his veto message, the Governor stated:

This bill would establish an additional system for collecting and remitting fees, surcharges and taxes applicable to prepaid mobile services. These charges would be collected from prepaid customers and remitted to the Board of Equalization, while fees collected from postpaid customers would continue to be remitted directly to the Public Utilities Commission, State 911 Fund and local governments.

There is no question that the state needs an effective system for capturing local taxes related to the sale of prepaid phones. The solution, however, proposed by this bill is duplicative, complex and will result in significant and unnecessary costs to the state.

I encourage the author to partner with the local governments and State Agencies affected by these revenues and craft a bill with a more cost effective solution.

In 2010, AB 2545 (De La Torre) would have required the CPUC to conduct a public process for the purpose of developing recommendations for an equitable and uniform method of collection for state and local government-imposed communications taxes, fees, and surcharges from prepaid communications end-user consumers. That bill was ordered to third reading in the Senate, but was subsequently moved to the Senate inactive file where the bill died.

During the 2011-12 Legislative Session, Assembly Member Fiona Ma introduced AB 1050, which would have imposed a MTS surcharge, similar to this bill. That bill died in the Senate Committee on Governance and Finance.

⁹ Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code.

COMMENT

1. **Sponsor and Purpose.** The bill is sponsored by CTIA – The Wireless Association¹⁰ and is intended to create a fair and uniform mechanism to ensure collection of state and local communications taxes and fees from consumers of prepaid mobile telephony services.
2. **The April 2, 2014 amendments** (1) delete the 5-year sunset date and related provisions, (2) make clarifying changes to the uncodified savings clause provisions, and (3) remove the provisions that for calendar year 2016:
 - Prohibit service suppliers from collecting the 911 Surcharge and CPUC surcharges and user fee from service users on the intrastate portion of charges made for prepaid MTS; and
 - Require service suppliers to remit to the BOE and CPUC amounts equal to the surcharges and fee that would have otherwise been reported and remitted.
3. **Postpaid versus prepaid.** Both postpaid and prepaid service requires an eligible phone, SIM card, and service supplier (carrier) activation (e.g. directly from device, online, or by phone). While postpaid service requires detailed service user information verified through a credit check, prepaid service requires a zip code at a minimum. Both postpaid and prepaid services require the service user to pick a rate plan. Available prepaid rate plans include monthly plans, similar to postpaid service, to, for example, per-minute plans and per-day plans. Both services may also allow additional feature and service purchases, such as insurance, international services, family locator, additional data, music, and ringtones. Both services also offer a non-contract option; however, only postpaid services offer a contract option that usually subsidizes the cost of the phone. Lastly, both postpaid and prepaid services require a customer account.

The principal difference between postpaid and prepaid wireless plans is in the name: service suppliers collect postpaid charges after service consumption whereas service suppliers collect prepaid charges before or at the time of service consumption. Another difference is that postpaid service requires a service user credit check while prepaid service does not.

4. **Postpaid and prepaid services plans.** A postpaid user receives a bill from the service supplier for services consumed, such as the cost of the plan, extra services (music and ringtone downloads, roaming, child-use monitoring, international options, etc.), and for surcharges and fees. The postpaid user has several payment options, such as credit/debit card, check, or online bill payment.

As the name implies, a prepaid user pays in advance for rate plans, services, and features. Prepaid users also maintain an account with the service supplier but must credit their account before service consumption. Prepaid users may credit their account using the same payment methods offered to postpaid users, but they may also pay through: refill cards (top-off cards). Top-off cards may be purchased at a third-party retail store or a carrier store through the use of check, credit card, or cash.

¹⁰ CTIA was originally the acronym for “Cellular Telecommunications and Internet Association.”

5. **Top-off cards similar to gift cards.** Top-off cards are simple to purchase and redeem, allow prepaid users to stay within a budget, and provide a convenient payment method for cash users. Top-off cards are similar to a gift card in that they are a form of payment.

As an example, a cash consumer purchases a \$50 top-off card at a retailer location. Although the card may “advertise” \$50 for all the text, talk, and data service you can use, the wording simply advertises a service supplier (carrier)-offered plan; the prepaid user has already selected their rate plan when the phone was activated. The \$50 redeemed to the user’s account may be used for more than paying for a rate plan; the credit may be used to purchase games, ringtones, music, and other services similar to postpaid service including locator services and roaming. If the consumer would like to purchase more services, they need to buy another card.

6. **Is 911 surcharge pre-collection possible?** Could service suppliers pre-collect the 911 surcharge in the same manner as they pre-collect for rate plans, services, and other features? For example, could a service supplier immediately impose and collect the 911 surcharge at the time a user credits and/or adds value their prepaid account? To illustrate:

Assume a new user selects a \$25 prepaid rate plan at activation that allows unlimited talk and text, plus 1 GB of data monthly. At the time of activation, the user redeems a \$50 top-off card, which credits the user’s prepaid account by \$50. Immediately, the service supplier imposes and collects the 911 surcharge in the amount of \$0.06 from the user’s \$50 account balance leaving a \$49.94 prepaid account balance.

At the beginning of the user’s service period, the service supplier deducts \$25 from the prepaid account for the selected rate plan, leaving a \$24.94 balance. During this same billing cycle, the user purchases ringtones (\$9.98) and additional data (\$10). Since this is a prepaid account, the service supplier immediately deducts \$19.98 from the user’s prepaid account leaving a \$4.96 account balance.

Nearing the next billing cycle, the user pays cash for a \$20 top-off card and redeems the credit to his account to bring the account balance to \$24.96. At the beginning of the billing cycle, the service supplier attempts to pre-collect for the \$25 rate plan; however, the account is short by \$0.04 and the service does not renew. The cash user must purchase another top-off card to bring the balance up to pay for the \$25 monthly rate plan to resume service.

Current law allows a service supplier to determine which charges are not subject to the surcharge based upon books and records. Current law also allows the service supplier to choose a reasonable and verifiable method to determine the interstate revenue portion not subject to the surcharge from the following:

- Books and records kept in the regular course of business; and
- Traffic or call pattern studies representative of the service supplier’s business within California.

Applying existing law to the \$50 top-off card, the service supplier may apply a percentage of charges not subject to the 911 surcharge. For this example, the service supplier determines that 80% of their prepaid services represent non-telecommunication services. As such, the service supplier applies the inverse

percent, 20%, to the \$50 amount credited to the prepaid account to determine the telecommunication charges.

- \$50 top-off card redeemed x 20% telecommunication charges = \$10 telecommunication charges

The service supplier then determines the interstate portion as 25%, and applies the inverse percentage to the telecommunication charge amount to arrive at the intrastate telecommunication charges.

- \$10 telecommunication charges x 75% intrastate portion = \$7.50 intrastate telecommunication charges

The service supplier then applies the 911 surcharge to the intrastate telecommunication charges to determine the correct 911 surcharge amount. \$7.50 intrastate telecommunication charges x 0.0075% surcharge rate = \$0.06 "911" surcharge

A service supplier may be unable to collect the surcharge if (1) the surcharge is collected at the end of a service cycle, and (2) the prepaid users prepaid account balance is zero. While BOE believes existing law provides service suppliers the authority to pre-collect the 911 surcharge at top-off or other credit to the account, it may be prudent to add clarifying language to the 911 surcharge law to specifically allow a surcharge pre-collection. BOE staff is available to draft such language.

7. **Administrative MTS surcharge program start-up cost funding essential.** This bill imposes the MTS surcharge on and after January 1, 2016. As a result, the BOE must begin to implement the bill in fiscal year (FY) 2015-16, or earlier if successfully signed during FY 2014-15.

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, this bill creates the MTS Surcharge Fund, which lacks funding to reimburse the BOE prior to collection of the tax. Upfront BOE implementation cost reimbursement is essential. Thus, BOE staff suggests the bill authorize a loan from the General Fund or other eligible fund to the Fund. The loan would be repaid from taxes collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed MTS program. **Without an appropriation, it may be necessary for the BOE to divert General Fund (GF) dollars to implement the proposed tax program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.**

8. **Service suppliers currently pay the 911 Surcharge for prepaid communication services.** The 911 Surcharge Act requires the BOE to enforce the provisions of that Act and authorizes the BOE to prescribe, adopt, and enforce rules and regulations relating to its administration and enforcement. In 2000, the BOE amended Regulation 2401, Definitions, and adopted Regulation 2403, Prepaid Telephone Calling Cards, to clarify the application of the 911 surcharge on dollar amounts or value of minutes deducted upon use of prepaid telephone and mobile telephone cards. These regulations were adopted to address confusion regarding the application of the tax to prepaid services within the telecommunications industry.

In general, the service suppliers state they report the 911 surcharge consistent with existing statutes and regulations. However, service suppliers argue that there is no

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statewide mechanism to collect the same communications fees and surcharges directly from prepaid wireless customers as are presently collected from post-paid customers. As such, service suppliers state they are not reimbursed for the 911 surcharge or for CPUC end-user fees from prepaid customers.

The surcharge proposed by this measure only applies to prepaid wireless services. Although the 911 surcharge applies to both prepaid calling cards and prepaid wireless services, the CPUC-related charges apply only to prepaid wireless services. Consequently, the MTS surcharge, which includes CPUC-related charges, applies only to prepaid wireless services.

9. Should the entire 911 surcharge program be revamped for a MTS surcharge?

Along with concerns regarding the collection of the 911 surcharge on prepaid wireless services, BOE staff suggests a thorough review of the 911 Surcharge Act to determine a more up-to-date surcharge mechanism to provide a sufficient revenue stream to fund the statewide emergency telephone number system.

This bill proposes to carve out a segment of the 911 Surcharge program (prepaid wireless) and instead impose a prepaid MTS surcharge on retail sales of the service that includes prepaid MTS and mobile data service. As discussed previously, the prepaid MTS surcharge also includes CPUC-related charges and is imposed in conjunction with the specified local taxes, fees, or surcharges.

This measure intends to address the collection of end-user taxes and fees directly from the consumer where, generally, an established relationship does not exist between the service supplier and consumer. This occurs when consumers purchase prepaid MTS from traditional retailers rather than directly from a service supplier. Without that direct relationship, service suppliers assert that they are unable to collect the taxes and fees directly from the prepaid wireless consumer. On the other hand, service suppliers are able to bill taxes and fees to cell phone consumers on their monthly service bill ("postpaid" services). Consumers pay those taxes and fees directly to the service supplier, who remits those amounts to the appropriate government entities.

The current 911 Surcharge program faces many challenges that include prepaid wireless services. Technology is rapidly changing, as are the devices and services that provide access to the 911 emergency telephone system. Some of these devices provide direct access to 911 with no intrastate telecommunication services provided, such as [5Star Urgent Response](#) and old, decommissioned cell phones. Since these devices provide no intrastate telecommunication services, the 911 surcharge does not apply. As such, their use/service does not contribute to the state emergency telephone number account.

Furthermore, surcharge revenues continue to decline because costly landline services have given way to more economical wireless and other communication services, such as electronic mail and texting. As consumer behavior changes, so do the services and products offered by carriers. For example, carriers may offer prepaid unlimited data and text separate from prepaid voice service due to voice service's decline. Under such a scenario, the MTS surcharge would apply only to the minimal per minute prepaid voice service, thus reducing the revenue estimated to be generated by this bill.

10. **MTS surcharge does not exclude ancillary services.** In its current form, the surcharge consists of any and all state and locally authorized taxes, fees, and surcharges that are applicable to **mobile telephony services**, as described. Except as provided, the bill requires the surcharge to apply to the entire price if prepaid MTS is sold in combination with mobile data services or any other service or products for a single price.

The bill requires the MTS surcharge rate calculation to include the 911 surcharge and CPUC-surcharge rates applicable to **intrastate telephone communication services**, as determined by the OES and CPUC, respectively. However, the application of the resulting MTS surcharge rate does not exclude ancillary services, such as voice-mail service, data, and messaging (texting). Assuming no difference between post- and pre-paid wireless service cost, MTS consumers will pay a higher surcharge than post-paid wireless consumers since the 911 surcharge and CPUC surcharges do not apply to ancillary services.

11. **Suggested amendments.** BOE staff had several concerns regarding the bill, which have, for the most part, been addressed through last year's AB 300 stakeholder meetings and amendments.

BOE staff also notes a missing word in Section 42010(g). The subdivision should read as follows:

(g) The prepaid MTS surcharge that is required to be collected by a seller and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the surcharge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharge, constitute debts owed by the seller to this state. The local charge ... charge.

On a technical note, BOE staff recommends an amendment to move all references to local prepaid MTS from Part 21 (commencing with Section 42010) to Part 21.1 (commencing with Section 42101). Similar to the Uniform Local Sales and Use Tax Law and the Transaction and Use Tax Law, the local provisions are contained only within those laws, and the state Sales and Use Tax Law makes no mention of the local taxes.

12. **MTS seller's recordkeeping and reporting would be complicated.** For sales and use tax purposes, MTS sellers likely hold seller's permits, file returns, and report applicable sales or use tax. In addition, prepaid MTS sellers might also sell tires, covered electronic devices, lumber products, and tobacco products, all of which impose a unique special tax or fee that existing law requires to be separately stated on their customers' receipt.

The various taxes require separate accounting records for MTS sellers that sell one or more of these specific commodities, which increases their record-keeping burden. Furthermore, a separate tax or fee statement on the customer receipt could result in additional retailer programming costs. However, this measure permits sellers to retain 2% of the MTS surcharge and local charges collected to defray their collection costs.

Furthermore, the Local Prepaid MTS Collection Act includes a UUT on the consumption of prepaid MTS service and a local 911 charge. This would further complicate a retailer's recordkeeping and reporting if they have retail locations in more than one jurisdiction that impose one or more local charges.

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13. This measure imposes a MTS surcharge at the time of each retail transaction for prepaid wireless services in this state. The bill states that a retail transaction occurs in the state if the prepaid consumer makes the retail transaction at a retail location in this state, or if the prepaid consumer makes a known-address transaction, as described. A known-address transaction that occurs in this state generally relates to an Internet-based or telephone-based transaction. In this case, the seller likely transfers the prepaid wireless services to the consumer by:

- Mail as a physical prepaid wireless card or a card bundled with a mobile phone; or
- Directly adding the prepaid minutes to the consumer's device.

In a known-address transaction, the seller may be located in this state or outside this state. It is questionable whether or not the state may legally require an out-of-state MTS retailer, who has no physical presence in California, to remit the surcharge on services sold to an in-state consumer. While service suppliers are currently registered with the BOE for purposes of the 911 Surcharge, some prepaid MTS sellers may be located outside this state even though they sell to California consumers.

14. Lifeline exemption. This measure includes an exemption from the prepaid MTS surcharge (not from local charges) on prepaid MTS purchased by a state or federal lifeline-eligible consumer when purchased directly from a seller authorized to provide such services. *However, wireless providers are not currently authorized to provide California LifeLine service programs, nor are federal lifeline discounts presently applicable to prepaid wireless service plans.*

In 2011, the CPUC opened a [rulemaking](#) proceeding to make changes to the California LifeLine program. In December 2012, the CPUC revised the "basic service" LifeLine definition to be technology-neutral; however, only landline providers can comply with the basic service element requirements. In April 2013, the CPUC commenced proceedings to consider whether or not wireless providers can provide California LifeLine service, consistent with the revised basic service definition. The initial phase of this multi-year proceeding is scheduled for completion within 18 months.

Also proposing changes to California LifeLine, AB 1407 (Bradford, 2013/14) authorizes wireless providers to voluntarily offer California LifeLine service, as described, and established a fixed LifeLine discount that an eligible customer may apply toward any voice communication service. That measure was held under submission in the Senate Appropriations Committee.

With respect to federal lifeline services, the CPUC has been evaluating proposals by wireless carriers seeking Eligible Telecommunications Carrier (ETC) status to provide federally funded discounted wireless service to low-income customers. To qualify for federal universal service lifeline subsidies, a service provider must be designated as ETC eligible. There are currently four CPUC-approved wireless providers that are authorized to offer federally-supported lifeline discounts in California. The discounts are offered through specific [cell phone plans](#) offered by Cricket Communications, Telcape Communications, Virgin Mobile USA, and Nexus Communications. Although federal lifeline discounts are available to prepaid wireless service plans, the California plans only include postpaid wireless service plans.

The prepaid MTS surcharge lifeline exemption will become operative once California and/or federal lifeline programs extend to prepaid wireless services. Although it is unknown when, or even if, this may occur, the BOE must take steps to implement the lifeline exemption (computer programming). The BOE staff is concerned about successfully implementing the exemption without decisive legislation or completion of the CPUC's rulemaking process. The bill itself generically states that the exemption *"is applied only to the amount paid for the portion of the prepaid mobile telephony service that the lifeline program specifies is exempt from the surcharges and fees that comprise the prepaid MTS surcharge."* The bill doesn't specify if California LifeLine will apply as a flat discount, a percentage discount, or a reduced-cost service plan, nor does it specify which service offerings it will include. What if the application of California's LifeLine program differs from the federal program? Would the surcharge exemption apply based on whether the consumer is state or federal LifeLine eligible? What if the consumer is eligible for both the state and federal programs?

COST ESTIMATE

BOE administrative costs related to this bill are substantial. These costs include: surcharge-payer identification, notification, and registration; regulation development; manual and publication revisions; surcharge return design; computer programming; return, payment, and refund claim processing; audit and collection tasks; staff training; and public inquiry responses. A detailed cost estimate is pending. As a point of reference, administrative costs associated with AB 300, which is nearly identical to this bill, were estimated to be \$11,391,000 for Fiscal Year (FY) 2014-15, \$11,937,000 for FY 2015-16, \$13,211,000 for FY 2016-17, and \$13,054,000 for FY 2017-18.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Local MTS Revenue. BOE staff found that there are over 150 local UUTs. Because of the number of UUTs and various rates, BOE staff was unable to estimate UUT revenue.

Current Prepaid Wireless CPUC & 911 Surcharge Revenue. According to the Federal Communications Commission's (FCC) [16th Mobile Wireless Competition Report](#), the 2011 wireless industry service revenues totaled \$169.8 billion. California constituted 12% of wireless subscribership in 2011. Thus, BOE staff estimates 2011 California wireless revenues at \$20.376 billion (\$169.8 billion wireless revenue x 12% California subscribership).

According to the FCC report, the average revenue per user (ARPU) for prepaid wireless service equals \$20 per month and the ARPU for postpaid service equals \$60 per month. Accordingly, the prepaid wireless ARPU constitutes one-third of the average postpaid wireless ARPU. The FCC report also specifies the prepaid wireless market penetration (subscriber number) at 22%. To arrive at the 7.33% prepaid market share used in the calculation below, BOE staff multiplied the 22% market penetration by one-third (the ratio of prepaid to postpaid ARPU).

The BOE staff estimates the California prepaid wireless revenue at \$1.494 billion, which staff then multiplied by the California intrastate revenue figure of 80% to arrive at \$1,195,392,000 California intrastate wireless revenue.

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2011	
US Total Wireless Revenue (December 2011)	169,800,000,000
California Wireless Revenue (12%)	20,376,000,000
Prepaid Market Share (20/60*22%) ¹¹	7.33%
California Prepaid Wireless Revenue	\$ 1,494,240,000
<hr/>	
California Intra-State Revenue (80%) ¹²	\$ 1,195,392,000

Current Public Purpose Fund & 911 Surcharge Revenue and Estimated MTS Revenue. The combined current CPUC surcharge and 911 surcharge rates amount to 3.48%. The table below provides a breakout of revenue calculated under current law and revenue calculated under this measure.

The *Estimated California Prepaid Wireless Revenue Base* for current law in the table below includes intrastate prepaid wireless revenues only, to which the existing surcharge rate applies. For purposes of this revenue calculation, the *Estimated California Prepaid Wireless Revenue Base* includes all prepaid wireless revenue, including interstate and intrastate communications, text, and data. To determine the revenues generated by this bill, the *Estimated California Prepaid Wireless Revenue Base* is multiplied by this bill's prepaid MTS rates, which are computed by multiplying the current surcharge rates by 80%.

AB 1717 Estimated Prepaid Revenues	Current Rates	Current Law 2011-12 BOE Calculated	AB 1717 Rates	AB 1717 BOE Calculated ¹³ Revenue	AB 1717 Industry Based ¹⁴ 2011-12 Revenue
Estimated CA Prepaid Wireless (PW) Revenue Base		\$1,195,392,000		\$1,157,632,819	\$1,591,745,126
Estimated PW 911 Surcharge Revenue:	0.50%	5,976,960	0.40%	5,788,164	7,958,726
Estimated PW ULTS Revenue:	1.15%	13,747,008	0.92%	13,312,777	18,305,069
Estimated PW DDTP Revenue:	0.20%	2,390,784	0.16%	2,315,266	3,183,490
Estimated PW CHCF-A Revenue:	0.40%	4,781,568	0.32%	4,630,531	6,366,981
Estimated PW CHCF-B Revenue:	0.30%	3,586,176	0.24%	3,472,898	4,775,235
Estimated PW CTF Revenue:	0.59%	7,052,813	0.472%	6,830,034	9,391,296
Estimated PW CASF Revenue:	0.164%	1,960,443	0.131%	1,898,518	2,610,462
Estimated PW PUC User Fees:	0.18%	2,151,706	0.144%	2,083,739	2,865,141
Total 911 and Public Purpose Fees	3.484%	\$ 41,647,457	2.787%	\$ 40,331,927	\$ 55,456,400

¹¹ As reported in the FCC report, the average prepaid wireless ARPU equals \$20 per month, or one-third of the average postpaid wireless ARPU which equals \$60 per month. In the same report, prepaid wireless market penetration (number of subscribers) equaled 22%.

¹² http://files.ctia.org/pdf/filings/120806_CTIA_USF_Contribution_Reply.pdf (Page 3)

¹³ See Table 1.

¹⁴ See Table 2.

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REVENUE SUMMARY

This measure would generate approximately \$40.3 million in gross revenue annually, less (1) existing CPUC and 911 surcharge revenue on prepaid wireless services which will no longer be imposed under this bill; and (2) the 2% in retailer reimbursement that the bill authorizes certain third party sellers to deduct and retain as reimbursement for their expenses. In other words, a telephone carrier or the provider of prepaid MTS is not authorized to deduct the 2% reimbursement. For the purpose of this estimate, we will assume that 50 percent of the annual prepaid wireless revenue will be derived from non-carrier retail sales for which the seller is authorized to deduct and retain 2% of the surcharge amount as retailer reimbursement.

In 2016, this measure will result in a revenue loss of \$1.7 million [(\$41.6 million less \$40.3 million) + (\$40.3 million * 2% * 50%) = \$1.7 million].

These figures do not take into consideration additional revenue lost under this measure for reimbursement to the BOE for administrative costs, which are substantial (see Cost Estimate discussion, above).

Qualifying Remark. The net revenue loss may be overstated to the extent that the *Estimated California Prepaid Wireless Revenue Base* under existing law does not take into account non-voice revenues derived from prepaid wireless devices, such as data (e.g. texting). We cannot separate these revenues with the data we have available; however, BOE staff assumes that the non-voice revenues are minor based on other available information.

Furthermore, if the lifeline exemption becomes effective before the expiration of this bill, revenues resulting from the MTS surcharge likely will be reduced. However, we do not know the amount of the reduction. Currently, the California LifeLine program does not extend to wireless services. The issue of whether the California LifeLine program should extend to these services is presently the subject of an ongoing proceeding before the CPUC. Because the LifeLine program currently does not include wireless services, we do not know with certainty when, or even whether, the lifeline exemption in this bill will be effective, nor do we know the number of MTS providers that will participate in the California LifeLine program or how the lifeline subsidy will be applied to wireless.

The revenue impact of the proposed amendments adding seller bad debt deduction provisions to the Prepaid MTS Surcharge Collection Act is minimal.

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Table 1 CA Prepaid Wireless Point of Sale Revenue Estimate Worksheet

	FY 2011-12
FCC Reported Subscribers (Postpaid and Prepaid) as of December 2011	34,892,000
CTIA Reported Prepaid Wireless Market Penetration (as of December 2011)	21.6%
CA Prepaid Subscribers from FCC Data	7,536,672
less 20% inactive accounts/churn/lifeline	1,507,334
CA paying prepaid Subscribers from FCC data	6,029,338
Estimated Monthly Revenue @ \$20 ARPU as reported by FCC Data	\$ 120,586,752
Estimated CA Annual Prepaid Revenue	\$ 1,447,041,024
Intrastate portion of prepaid	80%
Statutory Rate of 911 fee	0.500%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.400%
Estimated State 911 fee revenue	\$ 5,788,164
Universal Lifeline Telephone Service (ULTS) Statutory Rate	1.150%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.920%
Estimated ULTS Revenue	\$ 13,312,777
Deaf and Disabled Telecommunications (CA Relay) fee rate statutory rate	0.200%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.160%
CA Relay fee revenue	\$ 2,315,266
California High Cost A & B Funds statutory rate	0.700%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.560%
Estimated High Cost A&B Funds revenue	\$ 8,103,430
California Teleconnect Fund (CTF) statutory rate	0.590%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.472%
Estimated CTF revenue	\$ 6,830,034
CPUC User Fee statutory rate	0.1800%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.14400%
Estimated CPUC User Fee Revenue	\$ 2,083,739
California Advanced Services Fund (CASF) statutory rate	0.1640%
CASF rate adjusted for Intrastate using inverse FCC safe harbor	0.1319%
Estimated CASF Revenue	\$ 1,898,518
TOTAL STATE PUBLIC PURPOSE FEES, and 911 Fees	\$ 40,331,927

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Table 2 CA Prepaid Wireless Point of Sale Revenue Estimate Worksheet (Industry)

	FY 2011-12
FCC Reported Subscribers (Postpaid and Prepaid) as of December 2011	34,892,000
Estimated Prepaid Wireless Market Penetration	21.6%
Forecasted CA Prepaid Subscribers from FCC Data	7,536,672
less 20% inactive accounts/churn/lifeline	1,507,334
Forecasted CA paying prepaid Subscribers from FCC data	6,029,338
Estimated Monthly Revenue @ \$27.50 ARPU	\$ 165,806,784
Estimated Annual Prepaid Revenue	\$ 1,989,681,408
Intrastate portion of prepaid	80%
Statutory Rate of 911 fee	0.500%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.400%
Estimated State 911 fee revenue	\$ 7,958,726
ULTS Statutory Rate	1.150%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.920%
Estimated ULTS Revenue	\$ 18,305,069
CA Relay fee rate statutory rate	0.200%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.160%
CA Relay fee revenue	\$ 3,183,490
High Cost A & B Funds statutory rate	0.700%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.560%
High Cost A&B Funds revenue	\$ 11,142,216
California Teleconnect Fund statutory rate	0.590%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.472%
CTF revenue	\$ 9,391,296
PUC User Fee statutory rate	0.1800%
Rate adjusted for Intrastate using inverse FCC safe harbor	0.14400%
PUC User Fee Revenue	\$ 2,865,141
California Advanced Services Fund statutory rate	0.1640%
CASF rate adjusted for Intrastate using inverse FCC safe harbor	0.131%
CASF Revenue	\$ 2,610,462
TOTAL STATE PUBLIC PURPOSE FEES, and 911 Fees	\$ 55,456,400

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